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Attorney for Plaintiff, Elana Dimitria Mendyuk

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION**

Elana Dimitria Mendyuk,

Plaintiff,

v.

Martin O'Malley¹, Commissioner of
Social Security,

Defendant.

Case No. 1:24-cv-00459-SKO

**STIPULATION AND UNOPPOSED
MOTION FOR THE AWARD AND
PAYMENT OF ATTORNEY FEES
AND EXPENSES PURSUANT TO THE
EQUAL ACCESS TO JUSTICE ACT;
ORDER**

(Doc. 12)

IT IS HEREBY STIPULATED by and between the parties through their undersigned counsel, subject to the approval of the Court, that Plaintiff be awarded attorney fees and expenses in the amount of EIGHT HUNDRED FIFTY-SIX AND 17/100 (\$856.17) under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d), and costs in the amount of ZERO dollars (\$0) under 28 U.S.C. §1920. This amount

¹ Martin O'Malley became the Commissioner of Social Security on December 20, 2023. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Martin O'Malley should be substituted for Kilolo Kijakazi as the defendant in this suit. No further action need be taken to continue this suit by reason of the last sentence of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g).

1 represents compensation for all legal services rendered on behalf of Plaintiff by counsel
2 in connection with this civil action, in accordance with 28 U.S.C. §§ 1920, 2412(d).

3 After the Court issues an order for EAJA fees to Plaintiff, the government will
4 consider the matter of Plaintiff's assignment of EAJA fees to counsel. Pursuant to
5 *Astrue v. Ratliff*, 560 U.S. 586, 598, 130 S.Ct. 2521, 177 L.Ed.2d 91 (2010), the ability
6 to honor the assignment will depend on whether the fees are subject to any offset
7 allowed under the United States Department of the Treasury's Offset Program. After
8 the order for EAJA fees is entered, the government will determine whether they are
9 subject to any offset.

10 Fees shall be made payable to Plaintiff, but if the Department of the Treasury
11 determines that Plaintiff does not owe a federal debt, then the government shall cause
12 the payment of fees, expenses and costs to be made directly to Counsel, pursuant to
13 the assignment executed by Plaintiff. Any payments made shall be delivered and
14 made payable to Plaintiff's counsel, Jonathan O. Peña. Additionally, any payment of
15 costs under 28 U.S.C. §1920 may be made either by electronic fund transfer (EFT) or
16 by check.

17 This stipulation constitutes a compromise settlement of Plaintiff's request for
18 EAJA attorney fees, and does not constitute an admission of liability on the part of
19 Defendant under the EAJA or otherwise. Payment of the agreed amount shall
20 constitute a complete release from, and bar to, any and all claims that Plaintiff and/or
21 Counsel including Counsel's firm may have relating to EAJA attorney fees in
22 connection with this action.

23 This award is without prejudice to the rights of Counsel and/or Counsel's firm
24 to seek Social Security Act attorney fees under 42 U.S.C. § 406(b), subject to the
25 savings clause provisions of the EAJA.

26 Respectfully submitted,
27
28

1 Dated: September 5, 2024

/s/ Jonathan O. Peña

2 JONATHAN O. PEÑA

3 Attorney for Plaintiff

4 Dated: September 5, 2024

5 PHILLIP A. TALBERT

6 United States Attorney

7 MATHEW W. PILE

8 Associate General Counsel

9 Office of Program Litigation

10 Social Security Administration

11 By: * Justin Lane Martin

12 Justin Lane Martin

13 Special Assistant U.S. Attorney

14 Attorneys for Defendant

15 (*Permission to use electronic signature
16 obtained via email on September 5, 2024).

17 **ORDER**

18 Based upon the parties' Stipulation and Unopposed Motion for the Award and
19 Payment of Equal Access to Justice Act Fees and Expenses (the "Stipulation") (Doc.
20 12),

21 **IT IS ORDERED** that fees and expenses in the amount of EIGHT HUNDRED
22 FIFTY-SIX DOLLARS AND 17/100 (\$856.17) as authorized by the Equal Access to
23 Justice Act (EAJA), 28 U.S.C. § 2412(d), be awarded subject to the terms of the
24 Stipulation.

25 IT IS SO ORDERED.

26 Dated: September 9, 2024

/s/ Sheila K. Oberto

27 UNITED STATES MAGISTRATE JUDGE